

**SENSITIVE**

**FEDERAL ELECTION COMMISSION**  
999 E Street, NW  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 4994

DATE COMPLAINT FILED: April 4, 2000

DATE OF NOTIFICATION: April 10,  
2000; August 29, 2000<sup>1</sup>

DATE ACTIVATED: August 14, 2000

EXPIRATION OF STATUE OF

LIMITATIONS: August 16, 2004

STAFF MEMBER: Lawrence L. Calvert Jr.  
Anne A. Weissenborn

**COMPLAINANTS:**

Scott Harshbarger, Common Cause  
Fred Werthheimer, Democracy 21

**RESPONDENTS:**

New York Senate 2000  
and Andrew Grossman, as treasurer  
Hillary Rodham Clinton for  
U.S. Senate Committee, Inc.  
and William J. Cunningham, III, as treasurer  
Hillary Rodham Clinton  
New York State Democratic Committee  
and David Alpert, as treasurer  
New York Democratic Victory 2000  
and Andrew Tobias, as treasurer  
Democratic Senatorial Campaign Committee  
and James P. Fox, as treasurer  
Metabolife International, Inc.  
New York Republican Federal Campaign  
Committee and Michael Avella, as treasurer  
National Republican Senatorial Committee  
and Starr Hückaby, as treasurer  
Rudolph W. Giuliani  
Friends of Giuliani Exploratory Committee

<sup>1</sup> It was determined after activation that Michigan Senate 2000, the Ashcroft Victory Committee, the Santorum Victory Committee, and their treasurers should have been notified of the complaint. These respondents were notified on August 29, 2000.

1 or any combination of such committees, from contributing more than \$17,500 to any candidate's  
 2 campaign for U.S. Senate. 2 U.S.C. § 441a(h). Corporations and labor organizations may not  
 3 make contributions in connection with a federal election. 2 U.S.C. § 441b(a). Political  
 4 committees may not accept contributions which exceed the statutory limitations or which are  
 5 prohibited by 2 U.S.C. § 441b(a). 2 U.S.C. §§ 441a(f) and 441b(a).

6 Under the Act, a "contribution" includes "any gift, subscription, loan, advance, . . . or  
 7 anything of value made by any person for the purpose of influencing any election for Federal  
 8 office . . ." 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1). "Anything of value" includes  
 9 in-kind contributions. 11 C.F.R. §§ 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A). A "person" is  
 10 "an individual, partnership, committee, association, labor organization, or any other organization  
 11 or group of persons . . ." 2 U.S.C. § 431(11) and 11 C.F.R. § 100.10.

12 In addition to direct contributions, national and state party committees may make  
 13 expenditures in connection with the general election campaigns of their candidates for Federal  
 14 office subject to the limitations at 2 U.S.C. § 441a(d)(3).<sup>3</sup> Only expenditures that are  
 15 "coordinated" between a party and a candidate are subject to the Section 441a(d) limitations,  
 16 which are calculated based on the voting age population of the State. Political parties can also  
 17 make expenditures independently of candidates that are not subject to the limitations of 2 U.S.C.  
 18 § 441a(d). *See Colorado Republican Fed. Camp. Committee v. Federal Election Commission*,  
 19 518 U.S. 604, 614-616 ("Colorado Republicans I").

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<sup>3</sup> On June 25, 2001, in *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 531 U.S. 923, 121 S. Ct. 2351 ("Colorado II"), the Supreme Court upheld the constitutionality of the coordinated party expenditure limits set forth at Section 441a(d). The Commission approved a final rule setting forth standards for coordinated expenditures on November 30, 2000. 65 Fed. Reg. 76,138 (Dec. 6, 2000), codified at 11 C.F.R. § 100.23 (effective May 9, 2001, 65 Fed. Reg. 23,537). This rule expressly does not apply to coordinated expenditures by party committees. 65 Fed. Reg. 76,142 (Dec. 6, 2000).

1       Expenditures made by any person in cooperation, consultation, or concert, with, or at the  
2 request or suggestion of, a candidate, his or her authorized political committees, or their agents  
3 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). An  
4 "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift of  
5 money or anything of value made by any person for the purpose of influencing any election for  
6 Federal office." 2 U.S.C. § 431(9)(A)(i) and 11 C.F.R. § 100.8(a)(1).

7       Pursuant to 11 C.F.R. § 102.6(a)(ii), "[t]ransfers of funds may be made without limit on  
8 amount between or among a national party committee, a State party committee and/or any  
9 subordinate party committee whether or not they are political committees . . . and whether or not  
10 such committees are affiliated . . . ."

11       Political committees, such as state party committees, that finance activities with regard to  
12 both federal and non-federal elections must either establish a separate federal account into which  
13 may be deposited only contributions that are neither prohibited nor in excess of the statutory  
14 limitations, or, in the alternative, may establish a separate committee for purposes of their federal  
15 activities. 11 C.F.R. § 102.5(a). All disbursements, contributions, expenditures and transfers  
16 made in connection with a federal election by a committee with separate federal and non-federal  
17 accounts must be made solely from the federal account, and no funds may be transferred into that  
18 account from a non-federal account except as provided by 11 C.F.R. §§ 106.5 and 106.6.  
19 11 C.F.R. § 102.5(a)(1)(i).

20       All political committees are required to file reports of their federal receipts and  
21 disbursements. 2 U.S.C. § 434(a). Each report filed by a committee not authorized by a  
22 candidate must disclose all contributions made to candidates and their committees.

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1 2 U.S.C. § 434(b)(6)(B)(i). All political committees must report the identification of each  
2 political committee that has made a contribution to the reporting committee, together with the  
3 date and amount of any such contribution. 2 U.S.C. § 434(b)(3)(B). In-kind contributions must  
4 be reported as both contributions received and expenditures made. 11 C.F.R. § 104.13(a)(2).

5 Pursuant to 11 C.F.R. § 102.17(a), political committees may engage in joint  
6 fundraising with other political committees and also with unregistered entities, which  
7 may be committees or organizations. One permissible way to do this is to establish a  
8 separate committee to act as the fundraising representative. Such a representative  
9 becomes a reporting committee and an authorized committee of any candidate  
10 participating. The fundraising representative is responsible for collecting contributions,  
11 paying costs, and distributing the proceeds of the joint endeavors, and for seeing that the  
12 record keeping and reporting responsibilities of political committees are met. 11 C.F.R.  
13 § 102.17(a)(1)(i) and (b)(2).

14 All participants in joint fundraising must enter into a written agreement that identifies the  
15 fundraising representative and that sets out the formula for allocating proceeds. While this  
16 agreement need not be filed with the Commission, it must be retained by the fundraising  
17 representative for at least three years and made available to the Commission on request. All  
18 solicitations must contain a fundraising notice that names the participating committees, explains  
19 the allocation formula, states that contributors may choose to designate their contributions for a  
20 particular committee, and warns that the allocation formula may change if a contributor makes a  
21 contribution that is excessive relative to any participant. 11 C.F.R. § 102.17(c)(1) and (2).

22 The fundraising representative is required to establish a separate account into which all  
23 joint fundraising receipts are to be deposited and all disbursements made. Only permissible

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1 funds may be deposited into this account. If one of the joint fundraising participants is legally  
2 permitted to accept what would be impermissible funds under the Act, "the participants may  
3 either establish a second depository account for contributions received from prohibited sources or  
4 they may forward such contributions directly to the non-federal participants." 11 C.F.R.  
5 § 102.17(c)(3). Thus, a joint fundraising committee may include non-federal participants and  
6 may accept non-federal contributions, provided that those funds are deposited into a separate  
7 account created for that purpose or are distributed directly to participants permitted to accept  
8 them.

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**E. Friends of Giuliani Exploratory Committee and the New York Republican Federal Campaign Committee**

"Giuliani Victory Committee" was another joint fundraising committee in 2000. The statement of organization for this committee was filed on March 7, 2000. Its participants included the Friends of Giuliani Exploratory Committee, which was the authorized exploratory committee of Mayor Rudolph Giuliani for the U.S. Senate, and the National Republican Senatorial Committee ("NRSC"). The New York Republican Federal Campaign Committee, the state party committee supporting Republican candidates, did not participate in the Giuliani Victory Committee.

The Giuliani Victory Committee raised both federal and non-federal contributions, as it was permitted to do given the participation of the NRSC with its federal and non-federal accounts.

Between March 31 and June 30, 2000, the Giuliani Victory Committee distributed approximately \$211,000 in federal funds to the NRSC and approximately \$21,000 in federal funds to Friends of Giuliani. The same committee reported a total of \$565,561 in "other disbursements" of non-federal funds between March and the end of September 2000, while the NRSC reported the receipt of \$441,750 in non-federal funds from the Giuliani Victory Committee on March 30 and 31. In May 2000, Mayor Giuliani withdrew from the Senate race.

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This Office possesses no information at this time indicating that AVC had any role in the advertisements beyond that of apparent transferors of the money to pay for them. However, because it cannot be ruled out that investigation of the Ashcroft committee, the MRSC and the NRSC will produce information that AVC violated the Act, we also make no recommendations at this time concerning it.

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1 In response to the complaint, Giuliani, his authorized committee, the NRSC, the Giuliani  
2 Victory Committee, and the treasurers of all three committees, asserted that "[n]one of the non-  
3 federal funds raised by the [Giuliani Victory Committee] have ever been used for issue ads in  
4 New York, nor was it alleged in the Complaint that they had been so used." Moreover, they  
5 asserted, after Giuliani dropped out of the race it became "clearly impossible for [the] funds  
6 [raised by the joint fundraiser] to be spent for any purpose related to his campaign."

7 A review of the NRSC and Giuliani Victory Fund disclosure reports and a review of  
8 publicly available sources for information about advertising arguably connected to the New York  
9 Senate race in 2000 produced no information indicating that any funds raised by the Giuliani  
10 Victory Committee were passed through to be spent on advertisements benefiting Giuliani,  
11 eventual Republican nominee Rick Lazio, or any other candidate. Accordingly, this Office  
12 recommends the Commission find no reason to believe that Rudolph Giuliani, the Friends of  
13 Giuliani Exploratory Committee and John H. Gross, as treasurer, or the Giuliani Victory  
14 Committee and D. Jan McBride, as treasurer, violated any provision of the Act with respect to  
15 this matter.

16 **F. Santorum Victory Committee**

17 The final joint fundraising committee at issue in this matter is the Santorum Victory  
18 Committee ("SVC"). Like AVC, SVC filed a Statement of Organization with the Secretary of  
19 the Senate on July 27, 1999. The participants in SVC are Santorum 2000, the principal campaign  
20 committee of Rick Santorum in his ultimately successful 2000 campaign for reelection as U.S.  
21 Senator from Pennsylvania, and NRSC. Like the other joint fundraising committees in this  
22 matter, SVC raised both federal and non-federal funds, and was permitted to do so because one  
23 participant, the NRSC, had a non-federal account. This Office does not possess the joint

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1 fundraising agreement or any other information detailing how SVC was to allocate proceeds  
2 between Santorum 2000 and the NRSC.

3 SVC 2000 engaged in comparatively little activity in 1999, transferring \$11,000 in federal  
4 funds to its participants and \$12,500 in non-federal funds to the NRSC's non-federal account. In  
5 2000, it reported transferring \$218,000 in federal funds to Santorum 2000 and \$105,000 in  
6 federal funds and \$300,000 in non-federal funds to NRSC. Of the \$300,000, \$100,000 was  
7 transferred in December 2000, after the election.

8 A review of the NRSC and SVC disclosure reports and a review of publicly available  
9 sources for information about advertising arguably connected to the Pennsylvania Senate race in  
10 2000 produced no information indicating that any funds raised by the SVC were passed through  
11 to be spent on advertisements benefiting Santorum or any other candidate. Accordingly, this  
12 Office recommends the Commission find no reason to believe that Santorum Victory Fund or D.  
13 Jan McBride, as treasurer, violated any provision of the Act with respect to this matter.

14 **G. New York Democratic Victory 2000**

15 New York Democratic Victory 2000 was a joint fundraising committee whose  
16 participants were the Clinton for Senate committee and the Democratic National Committee  
17 ("DNC"). It evidently was not complained of in this matter, but was erroneously notified of the  
18 complaint.<sup>23</sup> This Office recommends the Commission find no reason to believe that New York  
19 Democratic Victory 2000 or Andrew Tobias, as treasurer, violated the Act in connection with the  
20 complaint in this matter.

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11 IV. RECOMMENDATIONS

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7 Find no reason to believe that Rudolph Giuliani; the Friends of Giuliani Exploratory  
8 Committee and John H. Gross, as treasurer; the Giuliani Victory Committee and D. Jan McBride,  
9 as treasurer; the Santorum Victory Committee or D. Jan McBride, as treasurer; or New York  
10 Democratic Victory 2000 or Andrew Tobias, as treasurer, violated any provision of the Act in  
11 connection with this matter, and close the file with respect to these respondents.  
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Date

9/14/01

Lois G. Lerner by AAS  
Lois G. Lerner  
Acting General Counsel


22-04-405-3777



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner  
Acting General Counsel

FROM: Office of the Commission Secretary 

DATE: September 17, 2001

SUBJECT: MUR 4994 - First General Counsel's Report  
dated September 11, 2001.

The above-captioned document was circulated to the Commission  
on Wednesday, September 12, 2001.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for  
Wednesday, September 19, 2001.

Please notify us who will represent your Division before the Commission on this  
matter.

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